

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

CLAIMANTS: Arthur D. Thompson; Margie Thompson

CASE 41U-0111-R-2023

41U 96909-00

41U 97133-00

41U 179261-00

41U 30147359

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Arthur D. Thompson and Margie Thompson (the Thompsons) are the record

owners of claims 41U 96909-00, 41U 97133-00, and 41U 179261-00. Arthur D. Thompson is the record owner of claim 41U 30147359.

2. Claims 41U 97133-00, 41U 179261-00, and 41U 30147359 were decreed with DNRC issue remarks:

41U 97133-00:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

ON 3/11/1985, AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE, THE DNRC NOTIFIED THE WATER COURT OF A POTENTIAL ISSUE WITH THE SOURCE NAME FOR THIS CLAIM. THE ELEMENT IS BEING ADDED TO THE OBJECTION LIST AND WILL BE ADDRESSED DURING ADJUDICATION OF THE PRELIMINARY DECREE.

41U 179261-00:

ON 3/11/1985, AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE, THE DNRC NOTIFIED THE WATER COURT OF A POTENTIAL ISSUE WITH THE SOURCE NAME FOR THIS CLAIM. THE ELEMENT IS BEING ADDED TO THE OBJECTION LIST AND WILL BE ADDRESSED DURING ADJUDICATION OF THE PRELIMINARY DECREE.

41U 30147359:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41U DECREE ISSUED 05/10/1984.
NO PRIORITY DATE WAS CLAIMED.

3. Claims 41U 97133-00 and 41U 179261-00 were decreed with the source listed as “Bassette Creek.” Based on information in the record, it appears the source for both claims should be corrected to “Bessette Creek.”

4. Claim 41U 30147359 was claimed without a priority date. Claimant Arthur D. Thompson wrote “historic” in the priority date field:

13. TYPE OF HISTORIC RIGHT: ☐ Decreed ☐ Filed Appropriation ☒ Use Date of first use: Historic

Attach copies of the decree, record of filing, or proof of use right.

5. An Order was issued setting a filing deadline for the Thompsons to address the issue remarks. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that the Thompsons agree the source name for claims 41U 97133-00 and 41U 179261-00 should be corrected to Bessette Creek. The Order also set a deadline for the Claimants to file a statement indicating the date of first use, along with evidence supporting the date of first use for claim 41U 30147359. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

6. On March 22, 2023, the Thompsons filed a Motion to Amend Source Name on Water Right Claim 41U 96909-00 (Motion to Amend). (Doc. 2.00)¹

7. Claim 41U 96909-00 was added to Case 41U-0111-R-2023. (Doc. 3.00)

8. In the Motion to Amend, the Thompsons explain that while researching the issues involving claim 41U 30147359, counsel determined the Thompsons own claim 41U 96909-00. The Motion explains that upon fixing the issues for claim 41U 30147359 it would be a duplicate claim with 41U 96909-00. As explained in the Motion to Amend:

The North Fork of the Dearborn River and the Dearborn River as it flows through the place of use of 41U 96909 00 are one and the same source. For that reason, this Motion to Amend Source Name on Water Right Claim 41U 96909 00 is being made to clarify the source to appear as follows:

Source Name: Dearborn River

Also Known as Dearborn River, North Fork

The addition of the "North Fork" to the source of water right 41U 96909 00 does not affect any other water user as it is a clarification only. With the source name Amendment to 41U 96909 00 as set forth above, the Water Master can dismiss 41U 30147359. A proposed abstract for 41U 96909 00 is attached.

9. The Thompsons did not file anything regarding claims 41U 97133-00 and 41U 179261-00.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The addition of a source name information remark to claim 41U 96909-00 does not have a reasonable potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA. The change does not constitute an expansion of the elements of the claim. The use of the water right has not changed.

5. The point of diversion information remark decreed on claim 41U 97133-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The source name for claims 41U 97133-00 and 41U 179261-00 should be modified to “Bessette Creek.”

2. Pursuant to the Motion to Amend, the following information remark should be added to the source for claim 41U 96909-00: ALSO KNOWN AS DEARBORN RIVER, NORTH FORK.

3. Pursuant to the Motion to Amend, claim 41U 30147359 should be dismissed.

4. The issue remarks should be removed from the active claims in the Case. Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 96909-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARGIE A THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648

ARTHUR D THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648 8602

Priority Date: JANUARY 1, 1899

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: DEARBORN RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS DEARBORN RIVER, NORTH FORK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESE	7	17N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2	7	17N	5W	LEWIS AND CLARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESE	7	17N	5W	LEWIS AND CLARK
2			N2	7	17N	5W	LEWIS AND CLARK

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 97133-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARGIE A THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648

ARTHUR D THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648 8602

Priority Date: MAY 28, 1898

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 170.54 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 10.00

Source Name: BESETTE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	16	16N	5W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO JULY 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO JULY 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		SENE	16	16N	5W	LEWIS AND CLARK

Total: 10.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 179261-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARGIE A THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648

ARTHUR D THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648 8602

Priority Date: MAY 15, 1887

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: BESETTE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2	16	16N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2	16	16N	5W	LEWIS AND CLARK

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 30147359 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: DISMISSED

Owners: ARTHUR D THOMPSON
7950 BIRDTAIL RD
WOLF CREEK, MT 59648 8602

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.